



Shelby County Board of Commissioners

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MIKE CARPENTER

Commissioner

District 1, Position 3

February 12, 2009

The Honorable Ann Pugh
General Sessions Criminal Court, Div.
201 Poplar Avenue
Memphis, TN 38103

Dear Judge Pugh:

No one knows better than you the epidemic level that domestic crime has reached in our community. That is why I felt so strongly that we must appoint someone to fill Judge Anthony Johnson's vacancy who understands the seriousness and the intricacies of the domestic violence problem. I think we achieved that in our appointment of Lee Wilson.

It is my understanding that Judge Wilson has requested or intends to request that he be allowed to hear a domestic violence only docket. I know and respect that you have strong reservations about this approach and that those concerns stem from your own pioneering experience. I also know that by virtually all accounts, your effort was successful both in terms of assuring victim safety and offender accountability. From what I know, the gaps were lack of resources and the toll that hearing these cases day-in and day-out had on you.

Today, there are more than 150 domestic violence courts or dockets in the U.S. I have attached a 2007 report from the National Center for State Courts (NCSC) that lists many of these and that gives an overview of the success of such courts. The general conclusion is that these courts can work, and there are many different models that can be effective. This leads me to believe that with your experience and a close look at these other models, we may be able to find a framework for a domestic violence docket that addresses your concerns and meets the community's needs.

As a County Commissioner, there is no higher priority for me than the safety and well-being of children and families. I pledge to you my support to find the necessary resources to make a domestic violence docket successful once again. I also know that our top law enforcement officials and our victim advocate organizations are also prepared to do their part. I would respectfully request that you and the other General Sessions Criminal Court Judges allow us to partner with you to bring it to fruition.

Finally, I fully recognize that this is, and has always been, the decision of you and your colleagues. I hope we can find common ground, but I will respect your decision. I look forward to and would appreciate your response on this issue.

Respectfully yours,

A handwritten signature in dark ink, appearing to read "Mike Carpenter", with a long horizontal flourish extending to the right.

Mike Carpenter

Cc: General Session Criminal Court Judges
AC Wharton, Mayor of Shelby County
William Gibbons, District Attorney General
Mark Luttrell, Sheriff of Shelby County
Larry Godwin, Director of Police Services, City of Memphis
Dottie Jones, Director of Community Services

The Current State of Domestic Violence Courts
in the United States, 2007

by

Hon. Donald E. Shelton

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Introduction

This main thrust of this project initially was, simply we thought, an effort to collect, update and catalogue a list of specialized domestic violence courts in the United States. Such problem-solving courts dedicated to domestic violence cases have been in existence for well over ten years and a published collection of domestic violence courts appeared in 2000. One would think that it would be a relatively simple matter to update that list.

The Justice Department, through the National Institute of Justice (NIJ) has funded a comprehensive study designed to produce not only a list of all domestic violence courts in the country but also a detailed description of the operations of each such court. This “National Portrait of Domestic Violence Courts” study grant has been awarded to the Center for Court Innovation¹ which has partnered with a variety of organizations around the country. The results of that grant funded study are not likely to be available until 2008.

As one perhaps should have gathered by the very existence of the NIJ grant, this compilation project proved to be more daunting than expected. There is no current central source for such information and considerable research was required to obtain the more current information reflected in this study. Using old lists and personal resources at the National Center for State Courts, the 2000 compilation was expanded to reflect some additional courts that had been established. A comprehensive literature search revealed that several of the courts had been professionally evaluated and those individual

¹ The CCI is a well known national organization devoted to the concept of problem solving courts. The organization website is at www.courtinnovation.org.

evaluations were helpful in locating and describing a few of the new courts. Nevertheless a state by state internet search of court web sites was necessary to both locate new courts that had been established and to eliminate courts in the 2000 compilation that were no longer functioning. The quality and comprehensiveness of state court system web sites varies a great deal and in several cases it was then necessary to follow up with personal contact by telephone or email to attempt to get the basic information needed for this study.

The resulting catalogue of domestic violence courts is the table in this study titled "Domestic Violence Courts in the United States – 2007". It does not purport to be a totally comprehensive compilation of existing domestic violence courts but reflects the best available investigation that could be conducted in the parameters of this study.

As a preface to the catalogue, it is helpful to initially review the history of domestic violence courts and I do so in the first section of this article. As they have developed, domestic violence courts have taken different forms. Some are very limited, such as personal protection orders only, while others have more expansive jurisdiction, even extending to serious criminal cases arising out of domestic assaults. The second section of this article describes and defines the various models that have been used across the country.

The third section sets the framework for the study with a description of the 2000 compilation. The results of the study, and the contents of the table, are described in the fourth section of the report. In addition to a discussion of the general results, I highlight some of the most important and laudable new efforts in this area.

The History of Domestic Violence Courts

Specialized courts have been a phenomenon in this country for almost a century. Initially thought of as techniques for making justice speedier and more efficient, they have also been more recently utilized to provide more specialized social justice goals.² Although specialized juvenile courts appeared early in the 1900s, they did not have the social “problem-solving” approach that would characterize more recent court innovations.³ Berman (2001) described the purpose of the “problem-solving” courts that began to appear in the 1980s:

“Problem-solving courts use their authority to forge new responses to chronic social, legal and human problems – including problems like family dysfunction, addiction, delinquency and domestic violence – that have proven resistant to conventional solutions. They seek to broaden the focus of legal proceedings, from simply adjudicating past facts and legal issues to changing the future behavior of litigants and insuring the future well-being of communities. And they attempt to fix broken systems, making courts (and their partners) more accountable and responsive to their primary customers – the citizens who use courts every day, either as victims, jurors, witnesses, litigants or defendants.”⁴

The application of this problem-solving approach to domestic violence was also the direct outgrowth of the feminism movement that began in the 1960s.⁵ Feminist legal theorists then directly posited the plight of battered women as a demonstration of the need for an equality model in the justice system. Okin for example pointed out that the exercise of male power in it’s “crassest form” was physical violence in the family setting

² Mirchandani, Rekha. (2005) “What’s So Special about Specialized Courts? The State and Social Change in Salt Lake City’s Domestic Violence Court,” 39 *Law & Society Review* 379.

³ Pleck, Elizabeth (1987) *Domestic Tyranny: The Making of Social Policy Against Family Violence from Colonial Times to Present*. New York: Oxford Univ. Press. Also see Littel, Kristin (2003) “Specialized Courts and Domestic Violence”, *Issues of Democracy*, U. S. Department of State. Available online at <http://usinfo.state.gov/journals/itdhr/0503/ijde/littel.htm>.

⁴ Berman, Greg, & John Feinblatt (2001) “Problem-Solving Courts: A Brief Primer,” 23 *Law & Policy* 125 at p. 126.

⁵ Epstein, Deborah (1999) “Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges and the Court System,” 11 *Yale J. of Law and Feminism* 3; Hanna, Cheryl (1998) “The Paradox of Hope: The Crime and Punishment of Domestic Violence,” 39 *William & Mary Law Rev.* 1505.

and that even liberal views of the justice system tolerated such violence.⁶ Other feminist scholars saw the plight of battered women and the reaction, or non-reaction, of the justice system to that plight somewhat differently. Littleton and other proponents of an acceptance model of feminist legal argued that while gender difference must be accepted, the law must account for the consequences of such difference and should affirmatively work to make them "costless".⁷ Acceptance theorists argued that equality should function to prevent the legal punishment of women on the basis of their difference.

Regardless of the theoretical differences among feminist legal theorists, the models seemed to come together in a practical sense concerning physical violence against women, particularly in a family or domestic setting.⁸ Whether women were viewed as being treated as unequal when it came to being victims of physical violence or whether the differences between women and their male assaulters were not being taken into account, all agreed that the legal system needed to be modified to react to the battering of women by men.⁹

The battered women's cause brought about changes in the law enforcement, primarily prosecutors and police, and eventually changes in the courts themselves.¹⁰ Keilitz (2004) pointed out:

⁶ Okin, Susan M. (1989) *Justice, Gender and the Family* at p. 128. New York: Basic Books.

⁷ Littleton, Christine A., "Reconstructing Sexual Equality," 75 *California Law Review* 1279-1337 (1987).

⁸ See e.g. Schneider, Elizabeth M. *Battered Women and Feminist Lawmaking* (Yale University Press 2000); Epstein, *supra* note 5; Hanna, *supra* note 5; Nancy James, *Domestic Violence: A History of Arrest Policies and a Survey of Modern Law*, 28 *FAM. L.Q.* 509 (1994); and more generally Goldscheid, Julie, "Domestic and Sexual Violence as Sex Discrimination: Comparing American and International Approaches" in the Symposium "The Global Impact of Feminist Legal Theory", 28 *Thomas Jefferson Law Review* 355 (2006).

⁹ See Wills, Donna, *Mandatory Prosecution in Domestic Violence Cases: Domestic Violence: The Case for Aggressive Prosecution*, 7 *UCLA WOMEN'S L.J.* 173, 177 (1997).

¹⁰ Keilitz, Susan (2000) *Specialized Domestic Violence Case Management: A National Survey*. Williamsburg, VA: National Center for State Courts. Available online at www.ncjrs.gov/pdffiles1/nij/grants/186192.pdf (last visited January 3, 2006)

“Since the late 1990s, a key development in State courts has been the institution of specialized structures, processes, and practices to address not only rising domestic violence caseloads but also the distinct nature of these cases and the need to give them special attention. These specialized approaches have collectively come to be called domestic violence courts. There is, however, great variation among these courts and in the specialized processes they use.”¹¹

In 1994, Congress passed the Violence Against Women Act¹². It “heightened public awareness of domestic violence and its detrimental effects on families, business, and society”.¹³ Perhaps more important to the development of domestic violence courts, the Act made large sums of federal monies available to the States to address domestic violence. The statute provided grants for “personnel, training, technical assistance, data collection and other equipment for the more widespread apprehension, prosecution, and *adjudication* of persons committing violent crimes against women”.¹⁴

Initially courts were reluctant to embrace the idea of a specialized domestic violence court. Many reasons were given for the reluctance. Some judges argued that criminal assaults should be treated blindly and equally by the justice system and that singling out domestic assaults from assaults by strangers or other non-partners was not warranted, as the domestic violence court movement had maintained.¹⁵ Others did not

¹¹ Keilitz, Susan (2004) “Specialization of Domestic Violence Case Management in the Courts: A National Survey” (in *Violence Against Women and Family Violence: Developments in research, Practice and Policy* 2004, National Institute of Justice, Bonnie Fisher (ed.), at p. III-9-3. Available online at www.ncjrs.gov/pdffiles1/nij/199701_sectionIII.pdf.

¹² 42 USC 3796 et seq.

¹³ Keilitz, *supra* note 10 at p. 1.

¹⁴ 42 USC 3796gg (b) [emphasis added]. For general information see the website of the Department of Justice Office on Violence Against Women at www.usdoj.gov/ovw/index.html (last visited January 14, 2007).

¹⁵ See Simon, Leonore (1997), “Do Criminal Offenders Specialize in Crime Types?”, 6 *Applied & Preventive Psychol.* 35 and Sherman, Lawrence & Richard Berk, (1984), “The Specific Effects of Arrest for Domestic Assault”, 49 *American Sociological Review* 261.

accept the basic premise of a "problem-solving" court with its accompanying rejection of traditional adversary system methods.

More particularly however there was, and still is, some aversion to the problem-solving concept as applied to domestic violence cases. As more fully discussed later, the domestic violence courts differ considerably from the other therapeutic or problem-solving courts in their focus on the safety of the victim as opposed to the rehabilitation of the offender. Applying the collaborative theory of problem-solving courts meant that judges were an integral part of the planning and monitoring of the program together with the prosecutor, probation, victim advocates and domestic violence staff members. Involving judges in that process was seen by some as detracting from the impartiality judges are supposed to maintain and in effect made them part of the prosecution. On the contrary, advocates asserted that there was evidence of partiality by judges against victims of domestic violence that necessitated a change in approach.¹⁶

Aside from the publicly stated reasons many suspected, as the feminist legal scholars had argued, that the reluctance stemmed from the dominance of men in the judiciary. Perhaps not coincidentally, as more women assumed prominent positions in the judiciary, court systems began to warm to the concept and gradually however more courts embraced the idea of what has been called the "therapeutic justice movement"¹⁷ and expanded those concepts to the area of domestic violence.¹⁸

¹⁶ Ford, J. et al (1995) "Case Outcomes in Domestic Violence Court: Influence of Judges", 77 *Psychol Rep* 587-594.

¹⁷ Fritzler, R B., & Simon, L. M. J. (2000). "Creating a Domestic Violence Court: Combat in the Trenches", 37 *Court Review* 28-39; Simon, L. M. J. (1995). "A therapeutic jurisprudence approach to the legal processing of domestic violence cases." 1 *Psychology, Public Policy and Law* 43-79;

¹⁸ See Wittner, Judith (1998) "Reconceptualizing Agency in Domestic Violence Court", in *Community Activism & Feminist Politics: Organizing Across Race, Class, and Gender*, (Nancy A. Naples ed.); Buzawa, Eve et al (1998), "The Response to Domestic Violence in a Model Court: Some Initial Findings and Implications", 16 *Behav. Sci. & L.* 185.